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June 28, 2006

Via Electronic Filing (ECFS)

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002

Re: Facility ID No. 35883
KWGN-DT, Denver Colorado
Request for Waiver of Interference Protection Deadline
and Renewal of DTV STA
MB Docket No. 03-15

Dear Ms. Dortch:

KWGN Inc. ("KWGN"), licensee of KWGN-TV-DT, Denver, Colorado, hereby requests a waiver of the July 1, 2006 interference protection deadline. As set forth below, KWGN has been unable to construct the 1 MW DTV facilities authorized in its underlying construction permit (FCC File No. BPCDT-19991029AHP) due to circumstances beyond its control – namely its inability to secure the necessary local permits to build-out its authorized DTV facilities. For this reason, KWGN also requests a renewal of its DTV STA. See FCC File No. BEDSTA-20051007ADD; FCC File No. BEDSTA-20060518ADN.

KWGN's transmission facilities are located on Lookout Mountain, an antenna farm located in Jefferson County ("JeffCo") outside of Denver. KWGN's DTV construction permit authorizes it to collocate its DTV antenna and related facilities on its main tower that is currently used, *inter alia*, for KWGN's analog operation. For several years, KWGN negotiated with various Jefferson County Zoning Administrators to craft a DTV implementation plan that conformed to their often variable interpretations of the local zoning code but also allowed KWGN to maintain its current analog service while building-out its authorized DTV facilities, facilities that essentially replicate KWGN's current analog service.

After various Zoning Administrators denied three separate telecommunications permit applications, KWGN appealed to the Jefferson County Board of Adjustments, the Jefferson County District Court (Case No. 2002CV1190 and consolidated cases) and ultimately to the Colorado Court of Appeals. Most recently, a Colorado Appeals Court reversed decisions by the Board of Adjustment and the District Court and reinstated a number of KWGN's legal challenges to the Zoning Administrator's denial of two different KWGN telecommunications

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permit applications. *See KWGN, Inc. v. Timothy W. Carl, Zoning Administrator for the Jefferson County Planning and Zoning Department*, Court of Appeals No. 04CA-1868, released March 9, 2006 (Colo. App.). The parties recently filed a stipulation with the District Court identifying the claims that should be remanded to the Board of Adjustment for resolution. Hearings on these claims are expected to occur later this year.

KWGN stands ready to construct the DTV facilities authorized in its construction permit as soon as it receives the necessary permits. KWGN has also not sat idly by during its ongoing dispute with the JeffCo Zoning Administrator. In 2002, KWGN secured both a telecommunications and building permit from the Zoning Administrator for the installation of a DTV antenna on its auxiliary tower and related modifications to its transmitter building. The permits were granted in significant part because KWGN's auxiliary tower was not tall enough to trigger most of JeffCo's local zoning code restrictions. Despite opposition from a local citizen's group known as the Canyon Area Residents for the Environment ("CARE"), KWGN ultimately received local zoning approval and special temporary authority ("STA") to operate a DTV facility with an effective radiated power ("ERP") of 450 kW from its auxiliary tower. *See FCC File No. BDSTA-20020625AKS*. KWGN commenced DTV operations pursuant to this STA on November 18, 2003 and has continued this operation pursuant to numerous STA extensions. CARE has an appeal challenging the grant of KWGN's permits for the DTV STA operation pending in Jefferson County District Court. *See Case No. 03-CV-10, consolidated into 02-CV-1190*. A status conference in this case is scheduled in District Court for July 28, 2006.

KWGN has clearly been unable to complete construction due to circumstances beyond its control. In fact, the FCC has already recognized that the local zoning problems faced by KWGN qualify as an "uncontrollable and unforeseeable" delay that warranted an extension of the DTV construction deadline. *See DTV Build-out, Requests for Extension of the Digital Television Construction Deadline by Stations with May 1, 2002 Deadline*, FCC 03-250, ¶¶ 16, 21, released October 23, 2003. The Commission also approved DTV construction extensions for several other Denver television stations because the local zoning problems were beyond their control. *See Requests for Further Extension of the Digital Television Construction Deadline*, FCC 03-22, ¶9 released February 6, 2003 (granting additional 6 month construction deadline extensions for Denver television stations KUSA-DT, KMGH-DT and KCNC-DT). The Commission should reach the same conclusion when acting on KWGN's instant request.

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For these reasons and because KWGN has taken the necessary actions to provide temporary DTV coverage to Denver while its works to resolve its local zoning problems, the Commission should grant the KWGN's request for a waiver of the interference protection deadline and simultaneously approve another renewal of its DTV STA.

Please direct any questions regarding this request to the undersigned.

Sincerely,

Thomas P. Van Wazer
Thomas P. Van Wazer
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